In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 131

ACCELERATED TRANSPORT—PONY EXPRESS, INC., ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

On Appeal from the United States District Court For the District of Vermont

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MOTION TO AFFIRM

Pursuant to Rule 16, paragraph 1(c) of the Revised Rules of this Court, the United States of America and Interstate Commerce Commission move that the judgment of the district court be affirmed.

STATEMENT

This is a direct appeal from a judgment (J.S. 13a) of a three-judge district court dismissing appellants' suit to set aside an order of the Interstate Commerce

Commission entered in *General Increase, Middle Atlantic and New England Territories*, 319 I.C.C. 168. The Commission disapproved, as not shown to be just and reasonable under Section 216(d) of the Interstate Commerce Act, 49 U.S.C. 316(d), certain portions of a schedule of rate increases filed by appellant Middle Atlantic Conference on behalf of its carrier members.

The proposed rate schedule established a general increase in motor carrier class and commodity rates between points within Middle Atlantic Territory,[1] and between points in Middle Atlantic and New England Territories.[2] The increases were opposed by a number of shippers and shipper organizations, including those who appear as appellees herein. After full administrative proceedings, the Commission (Division 2) concluded that the evidence of costs and revenues generally supported the proposed increases (J.S. 28a).

The Commission further concluded, however, that the increases were not shown to be just and reasonable insofar as they result in "higher rates to border points than to points beyond over the same routes" (J.S. 28a). It noted that the record revealed a number of instances in which the proposed increases would result in a higher rate for a shorter haul to a border

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[1] "Middle Atlantic Territory" includes New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, the District of Columbia, and parts of Kentucky and Tennessee.

[2] "New England Territory" includes Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.

point located within Middle Atlantic Territory than for a longer haul, *through* the border point, to a point beyond located in a different territory. (J.S. 24a). Referring to its numerous prior decisions[1] condemning motor carrier rates which result in higher rates for shorter than for longer hauls over the same routes, the Commission held that "if a carrier chooses to participate in the lower rates for the longer hauls it should arrange to maintain no higher rates at intermediate border points" (J.S. 28a). The order of the Commission required cancellation of the rate schedules, "to the extent found unlawful, without prejudice to their amendment so as to provide for the application of lower rates to more distant points as maxima at intermediate border points" (J.S. 28a).

The three-judge district court unanimously sustained the Commission's decision. The statute, it stated, requires the carrier to sustain the burden of proving that a proposed rate change is just and reasonable. Moreover, it is prima facie unreasonable, under the controlling decisions, for a carrier to charge more for a shorter than for a longer haul. The court observed that the carriers did not proffer evidence of segregated costs bearing on the particular challenged rates found unreasonable, nor claim that the

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[1] For example, the Commission in *Class Rates, Middle Atlantic & New England Territories*, 67 M.C.C. 741, 761, had condemned as "clearly unjust and unreasonable" a rate on particular groupings of $2.92 for hauling goods from New York City to Lynchburg, Va., as compared with $2.71 for hauling the same goods from New York City *through* Lynchburg to Gretna, Virginia. Other decisions are cited at p. 5 *infra*.

disapproval of these rates would make them unremunerative. It accordingly ruled that they had failed to meet their burden of proof (J.S. 8a).

ARGUMENT

This case presents no substantial question warranting plenary consideration by this Court. Appellant is merely seeking to avoid a burden of proof which has been invariably imposed upon carriers proposing rates which result in lesser charges for longer hauls than for shorter hauls along the same route. Section 216(d) of the Interstate Commerce Act (49 U.S.C. 316(d)) provides that "All charges made for any service rendered or to be rendered by any common carrier by motor vehicle . . . shall be just and reasonable", and it is well settled that "it is *prima facie* unreasonable to charge more for a shorter than for a longer haul", *Patterson* v. *Louisville & N.R.R.*, 269 U.S. 1, 11. With respect to railroads, Section 4 of the Interstate Commerce Act has, since the Act's inception, specifically provided that a greater charge for a longer than for a shorter haul along the same line is unlawful unless the carrier can establish that special circumstances exist which justify this long haul-short haul departure. That section merely reflects the view that this is a type of discrimination so patent as to warrant specific condemnation: *Mechling Barge Lines* v. *United States*, 376 U.S. 375, 385; Friendly, *The Federal Administrative Agencies: The Need for Better Definition of Standards*, 75 Harv. L. Rev. 863, 884. As this Court has pointed out, a specific statutory proscription is not necessary

to establish that the practice is *prima facie* an improper one. *Patterson* v. *Louisville & N.R.R.*, *supra*.

Accordingly, since the enactment of the Motor Carrier Act of 1935 the Commission has therefore consistently held that higher rates for shorter hauls than for longer hauls are presumptively unreasonable. *E.g.*, *Fifth Class Rates Between Boston, Mass., and Providence, R. I.*, 2 M.C.C. 530, 546; *Electric Storage Batteries from Kansas to Missouri*, 46 M.C.C. 729, 732; *Middle West Exceptions Ratings, Cancellation*, 48 M.C.C. 53, 57-58.[4] For the Commission to treat this type of apparent discrimination as requiring justification is well within its discretion as an expert in rate regulation. The appellants were on notice, consistent with the Commission's practice, that they would bear a special burden in connection with those aspects of its proposed rates which would result in lesser charges for longer than for shorter hauls. Appellants nonetheless failed to present evidence to rebut the presumptive unreasonableness of such rates (J.S. 7a).[5] Since they failed to sustain their burden,

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[4] In at least two prior proceedings, rates filed by the Middle Atlantic Conference have been condemned by the Commission for disparities at the same border points which are here involved. *Increases, Middle Atlantic & New England, 1948*, 49 M.C.C. 357, 366; *Class Rates, Middle Atlantic & New England Territories*, 67 M.C.C. 741, 761.

[5] The *Maggioni* case, relied upon by appellants (J.S. 11-12) in support of their contention that a general showing of reasonableness was sufficient to rebut the presumption, is inapposite, as the ground upon which the presumption was there held rebutted was that the Commission itself, pursuant to its authority under section 15 to prescribe reasonable rates for ~~mail~~ carriers, had previously *prescribed* an even higher Rail

it is irrelevant that the Commission did not also find that the rates involved were "unduly" preferential. Compare *Republic Aviation Corp.* v. *Labor Board*, 324 U.S. 793, 800; *Market Street R. Co.* v. *Railroad Comm'n*, 324 U.S. 548, 559.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted.

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maximum rate to the intermediate point. Furthermore, both the *Maggioni* case and the lower court decision in *Patterson* (J.S. 11) involved claims for reparations, as to which far stricter standards of proof, as to both unreasonableness and damages, must be met by a complaining shipper.

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